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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/299,309
Filing Date: April 26, 1999
Appellant(s): WALTERS ET AL.

Stephen Bongini
Registration No. 40,917
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/21/2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because the same issues pertain to both groups of claims. In particular, the same argument can be applied to both groups since only the perspective changes with respect to groups I and II.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) ***Prior Art of Record***

"A Teletraffic Analysis of Dial-up Connections over PSTN" to *Garroppo et al.* ("*Garroppo*")

"Internet Basics" to *Jones*

(10) ***Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-24 are rejected under 35 U.S.C. 103(a) as obvious to *Garroppo* in view of *Jones*. This rejection is set forth in a prior Office Action, mailed on 12/11/2003.

(11) ***Response to Argument***

Examiner's argument is best explained in view of figure 1 of *Garroppo* (see page 1191) and slide 157 of *Jones*. Specific rebuttals to applicant's arguments in the supplemental appeal brief follow the further explanation below.

In particular, figure 1 of *Jones* teaches a second speed device (i.e., client device) as the computers found on the left side of figure 1 connected to the PSTN, and a speed control layer is taught as the Access Server which includes the modem pool and dial-up router. What may not be clearly shown in the figure is a first device. However, a first device is taught in combination using slide 157 of *Jones*. In particular, *Jones* teaches a second device as either a computer/modem or telephone connected to the Wall (see left side of figure), a speed control later as the Access Sever (CO) connected in the Internet cloud, and a first device as the Information Provider (see right side of figure).

At issue between the examiner and applicant is the concept of a "first speed", "second speed" and "third speed" with respect to combined figure 1 and slide 157 mentioned above.

Jones teaches a "first speed" as the speed found between the CO in the Internet cloud (e.g., the leftmost CO shown in slide 157) and Information Provider. A "first speed" is also shown in *Garroppo* at figure 1 as the speed exiting the dial-up router which is part of the Access Server. (Please note that applicant interprets the examiner's "second speed" as a "first speed" in their arguments in the appeal brief.) A "second speed" is shown in *Jones* on slide 157 as the speed between the computer/modem or telephone and the CO. *Garroppo* in figure 1 teaches a "second speed" as the speed between the computers on the left and the modem pool through the PSTN. More importantly, *Garroppo* also teaches that a "first speed" is greater than a 'second speed". In particular, *Garroppo* teaches that a "first speed" is 64Kbps or 128 Kbps, and that a "second speed" is 28.8 Kbps or 33.6 Kbps, see e.g., left-hand column on page 1191. (Actually, the examiner would further argue that 28.8 Kbps or 33.6 Kbps is the maximum rate of a modem such that a user could auto-baud from a lower rate such as 14.4 Kbps up to that maximum rate of either 28.8 Kbps or 33.6 Kbps depending on the inherent characteristics of the leased line.) *Jones* does not mention specific link speeds. Thus a "first speed" is greater than a "second speed" as taught by *Garroppo* since 64 kbps is greater than 33.6 kbps. Also taught in this same section of *Garroppo* is that the speed of the "second speed" changes since the network is being upgraded. In particular, the speed may change from 28.8 Kbps to 33.6 Kbps. Thus the concept of a "third speed" is inherently taught by the reference since the speed between the computers on the left and the modem pool (i.e., Access Server) shown in figure 1 is infinite based on the current technology implemented. In other words, note that the speed went from 28.8 Kbps to a higher speed of 33.6 Kbps. Thus the advent of newer technology increases a "second speed" where the "third speed" will always by infinite or greater than a "second speed".

Claims 1-14 (Group I)

As to group I, independent claims 1 and 9 were chosen by the applicant to represent this group. With respect to group I, it is important to note that the examiner is referring to *a second speed* (either 28.8 kbps or 33.6 kbps) as a speed between a client or modem and the access server. Thus applicant's terminology at page 4, bottom paragraph is incorrect with respect to a first and second speed (i.e., a first speed is either 64 kbps or 128 kbps and not either 28.8 kbps or 33.6 kbps). What appears to be at issue is *how* a maximum data transfer speed is limited between a speed control layer and a second device. Examiner would like to point out that *how* a speed is limited is not recited in the claims. Hence examiner notes that how a maximum data transfer speed is limited with respect to time is not further recited in the claims (i.e., in reference to a "then-existing" connection, see e.g., first paragraph on page 5 of applicant's appeal brief). Examiner also notes the relationship of a second speed connection and third speed connection other than speed is also not further recited in the claims (e.g., inserting a delay as taught in applicant's specification at the bottom of page 4, line 22 is not further recited in the claims). As such, applicant argues that *a high-bandwidth connection* is not limited to a second predetermined speed since the second speed is set via the hardware/software of the access server. Examiner respectfully disagrees. In the examiner's rejection, the access server, via the modem hardware/software, rate limits the connection speed where the connection speed from is a first speed to a second speed and from a third speed (i.e., high bandwidth connection) to a second speed. Thus the limitation is met. In particular, the access server rate limits the first speed (e.g., 64 kbps) to a second speed (e.g., 33.6 kbps). As 33.6 kbps is a bottleneck, the current speed is only as fast as the "weakest" link which is 33.6 kbps. With respect to limiting a high-speed

connection to a second speed, the speed of a high-bandwidth connection is infinite as further taught by the concept of upgrading from a 28.8 kbps to a 33.6 kbps connection. For example, "downgrading" from a 33.6 kbps connection to a 28.8 kbps connection would teach going to a slower connection. In order to accomplish the above example, the modem hardware/software would have to be modified at the access server (and possibly at the client site) such that the access server performs a function of limiting. *Garroppo* teaches such a function. Hence an infinite connection is "downgraded" to a 33.6 kbps or 28.8 kbps connection thus meeting the claim limitation.

Claims 15-24 (Group II)

As to group II, independent claims 15 and 20 were chosen by the applicant to represent this group. With respect to group II, applicant makes very similar arguments as in group I. Hence please see the examiner's rebuttal for group I. In addition, the claims further recite a data transfer in a similar fashion. Hence the examiner feels that group I and group II can be grouped together. As for the subtle claim difference, examiner notes that "transfer data from the first device to a second device *over* a high-bandwidth connection at a second predetermined speed that is less than a first speed and less than the normal speed of the high-bandwidth connection" is substantially similar to applicant's claim 1. In the above case, a normal speed of a high-bandwidth connection is infinite. See similar reasoning above for group I.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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DWF
November 15, 2004

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